

CR15-00707-PHX-SRB STEWART WHITSON-PART#2 3-2-16

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America, )  
 )  
 Plaintiff, )  
 ) CR15-00707-PHX-SRB  
 vs. ) Phoenix, Arizona  
 ) March 2, 2016  
 Abdul Malik Abdul Kareem, )  
 )  
 Defendant. )  
 )  
 )

BEFORE: THE HONORABLE SUSAN R. BOLTON, JUDGE  
EXCERPT OF REPORTER'S TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL - DAY #10

TESTIMONY: SPECIAL AGENT STEWART WHITSON - PART #2  
(Pages 65-120, Inclusive.)

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E X C E R P T O F P R O C E E D I N G S

THE COURT: Agent Whitson, come take the witness stand.

And please go ahead and sit down as you come in. The record will reflect the jury has now joined us. Everyone else may also be seated.

Mr. Maynard, you may cross-examine Agent Whitson.

MR. MAYNARD: Thank you, Your Honor.

**SPECIAL AGENT STEWART WHITSON, WITNESS, SWORN**

**CROSS EXAMINATION**

BY MR. MAYNARD:

Q Good afternoon, Agent Whitson.

A Good afternoon, sir.

Q I want to ask you a couple of questions about just investigation in general.

You are the case agent on this case, correct?

A Yes.

Q And as the case agent, you are basically in charge of the entire investigation for the FBI?

A Yes.

Q Okay. So you are the one who decides what people need to be interviewed; is that correct?

A To a certain extent.

Q Okay. And you will decide to some degree what needs to be fingerprinted, what doesn't need to be fingerprinted?

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1 A To a certain extent.

2 Q All right. I mean, there's certain standards that the FBI  
3 follows on a case. I mean, for instance, because this event  
4 actually starts in Garland, Texas, the agents there actually  
5 started to process that scene before you ever got involved in  
6 this case?

7 A Yes.

8 Q Okay. And we've heard a number of the people that were  
9 testifying. I think we would ask them at times, Are you an  
10 agent?

11 And there are people working in the FBI who are not  
12 agents, they are just employees of the FBI; is that correct?

13 A Yes.

14 Q And the FBI has the capacity to do fingerprint analysis,  
15 correct?

16 A Yes.

17 Q DNA analysis?

18 A Yes.

19 Q Hair analysis?

20 A Yes.

21 Q Fibers?

22 A Yes.

23 Q And there are certain protocols that are followed by the  
24 FBI when it is processing a scene, correct?

25 A Yes.

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1 Q And there are also certain protocols that are followed  
2 when the FBI is interviewing witnesses?

3 A Yes.

4 Q Let's briefly talk about that for a minute.

5 In this case, for instance, the last witness that was  
6 on the stand, when he was interviewed six hours after he had  
7 learned of his brother's death, the FBI recorded that  
8 interview.

9 Are you aware of that?

10 A Yes.

11 Q And it was surreptitiously done. In other words, the FBI  
12 agents did not tell him we are recording this interview, at  
13 least according to him?

14 A Yes.

15 Q Why is that?

16 MS. BROOK: Objection. Speculation.

17 THE COURT: I think he's asking it generally why it's  
18 done, not why it was done in connection with that specific  
19 interview.

20 Would that be correct, Mr. Maynard?

21 MR. MAYNARD: Yes.

22 THE COURT: Why does the FBI interview people on tape  
23 and not tell them about it?

24 THE WITNESS: Well, so there's an option to do both.  
25 Obviously, you can record and tell the person that they are

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1 being recorded. And then it is also permissible to not tell  
2 the person they're being recorded.

3 And, generally, that decision is based on a judgment  
4 call of the person conducting the recording in consultation  
5 with their supervisor and with other people involved in the  
6 case.

7 Sometimes if you tell someone they're being recorded,  
8 that can make the statement -- they could be less forthcoming.  
9 So people will tend to -- especially that we are describing  
10 that scenario where the recording device was on the table, in  
11 my experience people will be staring at that recording device  
12 and it will make them nervous and not necessarily that they  
13 are going to lie, but it just makes them uncomfortable.

14 And so that's one reason that we might not say that a  
15 recording is going to take place. But there are certainly  
16 others as well.

17 Q Are there -- is there a protocol in the FBI that if  
18 somebody is a prospective target that you will surreptitiously  
19 tape them?

20 A No.

21 Q Is that a call that is left up to the agent who is doing  
22 the interview to decide?

23 A So, generally, it would be up to that agent in  
24 consultation with their supervisor and the rest of the team  
25 would make a decision on that, what made the most sense.

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1 Q Well, and using the last witness Ali Soofi that we just  
2 had, his first interview was taped.

3 Do you know whether or not the interview that was  
4 done of him at the airport was taped?

5 A I don't know.

6 Q You would be the person, though, who all --

7 What is a 302?

8 A A FD-302 is a report we generate whenever something occurs  
9 that is potentially testimonial.

10 So if we talk to someone that could be potentially  
11 testimonial, then we would write down that interview into our  
12 form which we call an FD-302.

13 Q And I'm just going to knock the "FD" off and call it a  
14 "302" from now on in your cross.

15 Were you responsible for reviewing all of the 302s  
16 that were generated in this investigation?

17 A For the investigation of Mr. Kareem, yes.

18 Q All right. We'll get to that in a second.

19 But if an agent did something that generated a 302,  
20 was that 302 then sent to you?

21 A Not always.

22 Q Okay. Would it eventually come to you?

23 A It depends. So may I explain?

24 Q Yes. Give me a --

25 A So, obviously, the initial investigation was the Simpson

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1 and Soofi investigation. Those two investigations each had  
2 their own case agent that would be running that case.

3 Any reports that had to do with Simpson and Soofi  
4 would have gone to those case files for those agents to  
5 review.

6 I became involved with Mr. Kareem a few days later, I  
7 think as I'd explained before, but it was around May 8th. And  
8 so until May 8th there wasn't -- I wasn't part of the  
9 investigation.

10 Q Well, in fact, prior to May 8th, the investigation wasn't  
11 really the investigation of Mr. Abdul Kareem. It was the  
12 investigation of Mr. Simpson?

13 A Exactly. And Mr. Soofi.

14 Q Well, didn't the investigation number actually go back to  
15 about 2006 when we look at those very first 302s?

16 A I'm not sure that they go back --

17 That would sound right but -- for Mr. Simpson.

18 Q I mean, you are aware that Mr. Simpson had been  
19 investigated by the FBI?

20 A Yes.

21 Q You are aware that Mr. Simpson had been prosecuted by the  
22 FBI?

23 A Yes.

24 Q You are aware that he was convicted of a crime?

25 A Yes.

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1 Q Lying to the FBI?

2 A Yes.

3 Q And he was a convicted felon?

4 A Yes.

5 Q Okay. And you understood that Mr. Simpson, after his  
6 conviction, was on probation?

7 A Yes.

8 Q Okay. As part of your investigation, have you determined  
9 whether any probation officers went and interviewed  
10 Mr. Simpson at his home?

11 A No.

12 Q You have not done that?

13 A No.

14 Q Okay. Now, in -- to stay with the taping for a few  
15 minutes, Mr. Soofi just testified and you heard his testimony  
16 that he was aware that he was being taped in some interviews  
17 that he had with the FBI in Kansas.

18 Do you recall that testimony?

19 A Yes.

20 Q Okay. Do you know whether or not he was taped when he did  
21 his September interview?

22 A Is that the video teleconference interview?

23 Q Yes.

24 A He was not taped.

25 Q Why, if you have him on a video teleconference in Kansas



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1 and you're here in Phoenix, are you not taping that?

2 A Well, that particular interview was with Mr. Soofi and his  
3 defense attorney. And it was -- and the end that we were on  
4 was in a U.S. Attorney's Office with the two prosecutors.

5 And so I assumed the call was -- and this is my  
6 assumption -- but the call was probably something that was  
7 made by his defense attorney that he didn't want that  
8 recorded.

9 But I don't know. It wasn't the FBI or anything.

10 Q Mr. Soofi seemed to think it was recorded, but it was not,  
11 correct?

12 A That's what he -- he seemed to think that, yes.

13 Q But it clearly was not recorded?

14 A It was not recorded.

15 Q And then there was an interview where you and Ms. Brook  
16 flew to Texas to meet with him at his mother's house, correct?

17 A Yes.

18 Q And that was to get him ready to come here and testify?

19 A Yes. To talk with him, yes.

20 Q And, again, you didn't record that conversation either,  
21 did you?

22 A No.

23 Q Does the FBI have a protocol that when they're getting a  
24 witness ready to testify that you don't record it so that it  
25 doesn't have to be turned over to defense counsel?

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1 A No.

2 Q You just -- was that your decision to make not to  
3 interview him -- or not to tape that last interview as you  
4 prepared him to come testify?

5 A No. My understanding is --

6 Q Wait. Was that --

7 A I'm sorry?

8 Q Was that your decision to make that particular call not to  
9 tape him?

10 A No.

11 Q Who made that decision?

12 A That would be the decision of the prosecutors.

13 Q Now, as this investigation began after the Garland event,  
14 were you involved in it on May 4th?

15 A Yes. I was involved, I guess you could say.

16 Q Is it fair to say that here in Phoenix, the FBI began to  
17 go out and take statements from people they thought might have  
18 knowledge about what had happened in Garland, Texas?

19 A Yes.

20 Q Okay. And the FBI also, I think, even on the evening of  
21 May 3rd started the process of going in to gather witnesses --  
22 gather evidence from Soofi and Simpson's apartment here in  
23 Phoenix?

24 A Yes.

25 Q Okay. And that evidence, as we've heard and seen, would

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1 be bagged, sealed, and then there would be a chain of custody  
2 so that you could process that for possible evidence that  
3 could be used in a trial?

4 A Yes.

5 Q Okay. And the FBI then also started calling particular  
6 people and asking them to come in for interviews, correct?

7 A Yes.

8 Q One of the people that you called to interview was my  
9 client Mr. Abdul Kareem?

10 A Yes. Detective Nash called him, yes.

11 Q Detective Nash is not an FBI agent, but he was working on  
12 the Joint Task Force with the FBI at the time?

13 A Yes.

14 Q Okay. And so Mr. Abdul Kareem came in to the FBI's office  
15 without having a subpoena, correct?

16 A Yes.

17 Q And he came in and he gave a statement to you and Mr. Nash  
18 without a lawyer present?

19 A Yes.

20 Q And during that same time period, you were also  
21 interviewing -- or the FBI or people of the Joint Task Force  
22 were interviewing people like Saleem Sampson?

23 A I'm not sure exactly when he was interviewed, but, yes, I  
24 know he was interviewed.

25 Q Okay.

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1 A Whether it was at the same time or not.

2 Q Ali Soofi was interviewed rather early?

3 A Yes.

4 Q Okay. Did you interview Duncan Simpson, Mr. Simpson's  
5 father?

6 A Yes. He was interviewed.

7 Q And did you interview Duncan Simpson, Jr., Mr. Simpson's  
8 brother?

9 A Yes. I believe so.

10 Q And there was an interview done of Nathaniel Soofi?

11 A Yes.

12 Q The son?

13 A Yes.

14 Q And his mother?

15 A Yes.

16 Q And Abdul Mubarak who came in here and testified earlier?

17 A Yes.

18 Q And Mr. Abdul Hyman, he was interviewed?

19 A Yes.

20 Q Now, all of these people are being interviewed and the FBI  
21 is beginning to gather evidence, correct?

22 A Yes.

23 Q You're getting evidence from Garland, Texas, and you're  
24 also gathering evidence from Soofi and Simpson's apartment?

25 A Yes.

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1 Q And when the FBI is going to seek to look for fingerprints  
2 or DNA, do you send that material to Quantico or do you  
3 process it here in Phoenix?

4 A That's all sent to Quantico; so DNA, fingerprints.

5 Q Now, let's talk just for a second about the interview with  
6 Abdul Malik that occurred on May 5th of 2015.

7 You intended to record that interview, correct?

8 A Yes.

9 Q And that interview was taken at the FBI office here in  
10 Phoenix?

11 A Yes. Yes.

12 Q And I believe your testimony on direct examination was  
13 Agent Brian Taylor had a room already equipped to do an  
14 interview in?

15 A Yes.

16 Q And you were going to video and audiotape that interview?

17 A Yes.

18 Q And you had a signal with Mr. Taylor where you would give  
19 him the thumbs up and he was to make sure that the camera was  
20 turned on?

21 A Yes.

22 Q And then for some reason or other, either the camera  
23 didn't turn on, or something happened to the machine?

24 A Yes.

25 Q Or something happened to the chip that was in the machine?

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1 A Yes.

2 Q Okay. And it would be your understanding when  
3 Mr. Kareem -- Abdul Kareem came in, you led him into that  
4 conference room and you turned around and gave the thumbs up?

5 A No.

6 Q No? When did you give the thumbs up?

7 A So, Detective Nash left the area where the interview rooms  
8 are and he went out into the lobby area which is -- to get  
9 Mr. Kareem.

10 And so I stayed behind. And once he left, I looked  
11 into the room where Special Agent Taylor was and I gave him  
12 the thumbs up signal. And they then kind of manipulated the  
13 machine or whatever and then looked back up to me and gave me  
14 a thumbs-up symbol.

15 Once he give me that thumbs-up symbol, that was a cue  
16 to me to know that the recording had started. So we were  
17 using thumb up because we didn't want to be talking, hey, is  
18 the recording going, because it would be capturing our voice  
19 saying that. So that's why we were using the thumb ups.

20 So when he gives me that thumbs-up and says the  
21 recording is going, then I turn and open the door that leads  
22 to the lobby area. And right as I open that door, that's when  
23 Detective Nash comes in with Mr. Kareem.

24 And so I escort him right in.

25 And to kind of back up a second, if I may, the room

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1 where Special Agent Taylor had this recording equipment set up  
2 is a room that's right nextdoor to the room where we were  
3 conducting the interview.

4 And so the doors are literally right next to each  
5 other, so, you know, once we did the thumbs-up signal, I was  
6 to shut that door. That's why he was starting it. And then  
7 we walked past that closed door into the room to do the  
8 interview.

9 Q So you would have expected that this audio/video machine  
10 was going to be working because Agent Taylor is an expert?

11 A Yes.

12 Q And it wasn't you or Nash that had to push the button to  
13 start it?

14 A Yes.

15 Q Agent Taylor should have been sitting there looking at it,  
16 seeing whether or not it was looking into the room and working  
17 properly, correct?

18 A Yes.

19 Q And you expected that that happened because he gave you  
20 the thumbs up?

21 A Yes.

22 Q And then you went in and you took an interview, believing  
23 that this audio and video recording was working?

24 A Yes.

25 Q And then afterwards you walked out and one of you went to

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1 turn it off, correct?

2 A Yes.

3 Q Either you or Mr. Nash?

4 A Yes.

5 Q Okay. And then one of you collected the card, the SIM  
6 card or whatever was used?

7 A Yes. Detective Nash collected the card.

8 Q Did you turn it off or did Detective Nash turn it off?

9 A Yes. I think I was the one that turned it off.

10 Q So you turn it off, but then he ejects the card?

11 A Yeah. Because it wasn't an instantaneous -- so I pushed  
12 the button and I think it just kind of had a -- where it shuts  
13 down or whatever and then it ejects and then he took the card.

14 Q Okay. And then he supposedly took the card down and put  
15 it into Security so that it can -- you have a chain of custody  
16 on the card, correct?

17 A Yes. It's Electronic Surveillance is that group that he  
18 brought it to.

19 Q That CART group we've talked about?

20 A It's not the same as CART, but it's in a -- they're a  
21 completely separate group, but essentially just any electronic  
22 surveillance, they keep track of that evidence as opposed to  
23 the other evidence room that has the other type of evidence.

24 Q And then at some point you learned that there was nothing  
25 on the card?



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1 A Yes.

2 Q And did you take any steps at that point to determine if  
3 the card had malfunctioned?

4 A Yes. So -- well, so I learned the day before --

5 Q Did you take steps --

6 A I mean, I personally did not.

7 Q Okay. Did you -- who took those steps to determine if the  
8 card had malfunctioned?

9 A So Special Agent Taylor went directly to Electronic  
10 Surveillance the next morning and he personally inspected the  
11 card to make sure it wasn't a mistake on their part, that the  
12 data wasn't buried on there somewhere.

13 And what he was able to find was the recordings of  
14 the test runs we had done before we started the recording, but  
15 that was all that was on there. There wasn't anything else.

16 Q Did anybody then go and check the equipment to see if it  
17 had malfunctioned?

18 A I don't know that -- I mean, I don't know if the equipment  
19 was still set up. It was something that was temporarily set  
20 up in the room.

21 Q To this day do you know what caused this malfunction that  
22 you have?

23 A I do not know.

24 Q And also in the interview room there is a camera, a  
25 security camera in the corner, that is looking down on the

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1 room, correct?

2 A Yes.

3 Q And it is -- although it's not taking audio, it's taking  
4 video?

5 A Yes.

6 Q And were you advised that you should keep a copy of that  
7 video of the interview since you now had lost the audio and  
8 the video?

9 A No.

10 Q Nobody told you that?

11 A I was not advised that I should do that.

12 Q Anybody suggest to you that that would be the right thing  
13 to do?

14 A No. Special Agent Taylor sent me --

15 Q You answered the question. Thank you.

16 Can I approach the clerk, Your Honor?

17 THE COURT: Yes.

18 MR. MAYNARD: Can the witness be shown Exhibit 547,  
19 please. Oh, I'm sorry.

20 BY MR. MAYNARD:

21 Q Do you recognize Exhibit 547?

22 A Yes.

23 Q Is this an e-mail starting at the bottom from Brian Taylor  
24 to you on May 6th of 2015?

25 A Yes.

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1 Q And then on the top are you responding to Mr. Taylor's  
2 e-mail to you on May 6th of 2015?

3 A Yes.

4 MR. MAYNARD: Okay. Move for the admission of  
5 Exhibit 547.

6 MS. BROOK: Your Honor, this e-mail contains hearsay,  
7 so we would object.

8 THE COURT: The objection is overruled.

9 547 is admitted.

10 (Exhibit No. 547 admitted in evidence.)

11 BY MR. MAYNARD:

12 Q Would you look at the first e-mail which is on the bottom  
13 of the page. It says:

14 "No luck on recovering the audio or video of the  
15 interview. I was able to recover the 'test' videos prior to  
16 the actual interview" --

17 And I'm going to skip down to the next paragraph.

18 "I spoke with Jeff Mendez this morning and told him  
19 that you would require video exported from the security system  
20 DVR."

21 Do you see that?

22 A Yes.

23 Q "He said no problem but requested that you send an e-mail  
24 to Shari McAllister" -- and on.

25 And you responded:

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1 "Thanks for running this all down. I'll touch base  
2 with the case agents first, and if they want me to proceed,  
3 I'll send the e-mail and get with Rich."

4 Do you recall sending this e-mail?

5 A Yes.

6 Q And I take then you did not follow through and save the  
7 security system DVR; is that correct?

8 A What do you mean by that?

9 Q It says you would require video exported from security  
10 system DVR.

11 So doesn't that refer to the security camera that's  
12 in the corner?

13 A So, yeah. I did not send a request to Rich Stoddard and  
14 Shari McAllister as he said.

15 Q You did not. Even though Mr. Taylor had suggested that  
16 you would need this, you didn't follow through and get that?

17 A No.

18 Q Now, the interview that you did on May 5th of 2015 of Mr.  
19 Abdul Kareem, you've testified you prepared a 302 the next  
20 day; is that correct?

21 A Yes.

22 Q And you testified you used Agent Nash's notes and some  
23 notes that you had?

24 A Yes.

25 Q How long were your notes?

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1 A My notes were maybe less than half of a page.

2 Q Okay. And this was an hour, hour-and-a-half interview?

3 A Yes. About that, yes.

4 Q Did you show Mr. Abdul Kareem any pictures during that  
5 interview?

6 A I don't believe so.

7 Q Now, after that interview he was free to leave, correct?

8 A Yes.

9 Q And do you recall whether or not his nephew who was with  
10 him was also interviewed on May 5th?

11 A Yes. I believe he was.

12 Q Okay. And there's a 302 of that interview also?

13 A Yes. It would -- yes.

14 Q Now, at some point the FBI got a call concerning an  
15 individual by the name of Stefan Verdugo, correct?

16 A Yes.

17 Q And Stefan Verdugo then met with FBI agents and he was  
18 interviewed at length?

19 A Yes.

20 Q Is it fair to say that after Stefan Verdugo came in and  
21 met with the FBI on or about May 7th, that the investigation  
22 in this case changed?

23 A Yes. That's fair.

24 Q At that point did Mr. Abdul Kareem, based on Mr. Verdugo's  
25 statements to the FBI, did he become the target of the

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1 investigation?

2 A He became a subject. He became an investigative subject.

3 Q What is the difference between a "subject" and a "target"?

4 A Well, there can be a couple different types of  
5 investigations.

6 One type of investigation can be of an incident. So,  
7 for instance, the investigation that was going on in Dallas  
8 was an investigation of the Garland attack.

9 My investigation that I was involved in was an  
10 investigation of a subject and in this case it was Mr. Kareem.

11 Q What's the difference between a "subject" and a "target"?

12 A Well, I guess that would be semantics.

13 Q Okay.

14 A I wouldn't really call him a "target." I would call him a  
15 "subject."

16 Q Beginning on May 8th, did the FBI begin to do surveillance  
17 on Mr. Kareem?

18 A I don't recall the exact day, but it would have been very  
19 close to May 8th which was the day we opened the full  
20 investigation.

21 MR. MAYNARD: Your Honor, can I put a 302 showing the  
22 beginning of the -- to refresh his recollection?

23 THE COURT: Yes.

24 BY MR. MAYNARD:

25 Q Agent Whitson, I'm going to put on a 302. Could you take

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1 a look at that for a moment?

2 A Yes.

3 Q Does that help refresh your recollection?

4 A That does. Thank you.

5 Q Do you recall that the physical surveillance of Mr. Abdul  
6 Kareem began the day after the FBI met with Mr. Verdugo?

7 A Well, so all I can tell from that is it looked like  
8 surveillance was going on on the 8th. I can't tell  
9 necessarily when it started.

10 But it was certainly going -- that would make sense  
11 that it would have started on the 8th after we had opened the  
12 full investigation.

13 Q All right. Were you -- is that the date that you became  
14 the case agent?

15 A Yes.

16 Q Okay. And starting on May 8th, the FBI began to do  
17 physical surveillance on Mr. Abdul Kareem on a daily basis?

18 A Yes.

19 Q And what I mean by "physical" -- or "physical  
20 surveillance" is you had agents that were literally watching  
21 him from 7:30 or 8:00 in the morning until sometime into the  
22 evening?

23 A Twenty-four hours a day.

24 Q You had him 24 hours a day?

25 A Twenty-four hours a day.

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1 Q And there were times when he would be driving his moving  
2 truck and there would be helicopters that would be following  
3 him?

4 A There's an aircraft, so an airplane. I don't know of any  
5 helicopters, but there was an aircraft.

6 Q Okay. And, additionally, you engaged Mr. Verdugo to  
7 assist in this investigation at that point?

8 A Well, he had already come forward on his own before that,  
9 but.

10 Q He had come forward and you asked Mr. Verdugo to make some  
11 telephone calls to Mr. Abdul Kareem?

12 A Yes.

13 Q And those telephone calls were then monitored and taped?

14 A Yes.

15 Q And you then asked Mr. Verdugo to try to go back to work  
16 with Mr. Abdul Kareem?

17 A Yes.

18 Q And you asked Mr. Verdugo to carry a body wire so that his  
19 conversations with Mr. Abdul Kareem and others would be taped?

20 A Yes.

21 Q And this went on for several weeks?

22 A Yes.

23 Q And you gathered all of that information as part of this  
24 investigation?

25 A Yes.



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1 Q Okay. And I believe we've heard Mr. Verdugo was paid  
2 \$500?

3 A Yes.

4 Q Was he ever paid any more than that?

5 A No.

6 Q In fact, at some point while he was assisting the FBI in  
7 this, did he get charged with a crime?

8 A Yes.

9 Q And then he fled the state and went to California?

10 A Yes.

11 Q Okay. Now, the FBI then decided to arrest Abdul Kareem on  
12 June 10th of 2015?

13 A Yes.

14 Q Correct?

15 A Yes, sir.

16 Q And you arrested him at a gas station. He was in his  
17 moving truck?

18 A Yes.

19 Q Okay. And he didn't resist?

20 A No.

21 Q He didn't run away?

22 A No.

23 Q And during the entire time that the FBI was following him  
24 24 hours a day from May 8th, was that until June 10th?

25 A Yes.

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1 Q Okay. You never saw him try to leave the state?

2 A No.

3 Q Never saw him try to leave the country?

4 A No.

5 Q Okay. And he is arrested and he is taken into custody and  
6 he is then taken to the FBI headquarters to be interviewed  
7 again?

8 A Yes.

9 Q And this time we do have a tape of that interview?

10 A Yes.

11 Q And you read him his rights because he is now under arrest  
12 and he's in custody?

13 A Yes.

14 Q And he decided not to have a lawyer?

15 A Yes.

16 Q When the FBI is talking to witnesses or potential  
17 witnesses, is it okay for the FBI to lie to them?

18 A Yes.

19 Q Isn't that something you routinely do is you'll lie to  
20 somebody and say, "Geez, Mr. A has told us this terrible thing  
21 about you"?

22 A Not routinely.

23 Q You do it on occasion?

24 A On occasion.

25 Q It's a technique that's used by the FBI?

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1 A Yes.

2 Q I mean, you told -- you told Mr. Abdul Kareem that --

3 Strike that.

4 You told Mr. Hyman that Mr. Abdul Kareem had said  
5 that he had been out in the desert shooting with him when you  
6 interviewed Mr. Hyman?

7 MS. BROOK: Objection. Hearsay.

8 THE COURT: Sustained.

9 BY MR. MAYNARD:

10 Q Okay. Once Mr. Abdul Kareem was arrested, you took his  
11 pickup truck or his moving truck and you started processing  
12 it, correct?

13 A Yes.

14 Q And in that truck you found a lot of documents that dealt  
15 with the running of his business?

16 A Yes.

17 Q I mean, he clearly was running a business, was he not?

18 A Yes.

19 Q And you found a gun?

20 A Yes.

21 Q And when you interviewed him that day, did you ask him if  
22 he had any weapons?

23 A Yes.

24 Q And he told you that there would be a gun in the truck?

25 A Yes.

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1 Q And he told you there would be a gun in his house?

2 A Yes.

3 Q And at that point, you had not told him that there was a  
4 search warrant and that there was a search going on in his  
5 home, had you?

6 A I think I had, because I think my question to him was:

7 Are we going to find any guns?

8 So it's kind of in a sense that we're doing a search  
9 there. Can you just tell us where they're at so we can move  
10 along.

11 Q And he told you there was one there?

12 A He said there was.

13 Q And he told you it was a 9 millimeter?

14 A Yes.

15 Q And you asked him did he have any other weapons and he  
16 said no?

17 A Yes.

18 Q Okay. And during that time period where you're  
19 interviewing him, FBI agents are processing his house and also  
20 processing his truck?

21 A Yes.

22 Q And later that evening you go out and you meet with  
23 Mr. Abu -- Mr. Mubarak?

24 A Yes.

25 Q And you tell him that Mr. Abdul Kareem has been arrested?

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1 MS. BROOK: Objection. Hearsay.

2 THE COURT: Overruled. You may answer if you told  
3 him that when you interviewed him that night.

4 THE WITNESS: Yes.

5 BY MR. MAYNARD:

6 Q Okay. Did you tell him that he was going to spend the  
7 rest of his life in jail?

8 MS. BROOK: Objection. Hearsay.

9 THE COURT: Sustained.

10 BY MR. MAYNARD:

11 Q Agent Whitson, also during this same time period prior to  
12 the arrest of Mr. Abdul Kareem had a grand jury been empaneled  
13 or was there a grand jury empaneled that was actually looking  
14 at him?

15 A At Mr. Kareem?

16 Q Yes.

17 A Yes.

18 Q Okay. And were you the one that was asking for certain --  
19 to get this grand jury to give certain subpoenas to get  
20 certain information?

21 A Yes. I had submitted grand jury subpoenas.

22 Q Right. I mean, you asked for all of his banking records?

23 A Yes.

24 Q Is that correct?

25 You asked for all of his records dealing with

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1 telephone companies that he had had any relationship with?

2 A Yes.

3 Q I mean, in fact, I think you -- I think I saw them for  
4 four different telephone companies, correct?

5 A Yes.

6 Q And all of these companies complied and you got all of  
7 that information?

8 A Yes.

9 Q And you got Google searches that he had done, correct?

10 A Yes. Those are search warrant returns not --

11 Q I'm sorry?

12 A I had search warrant returns from Google, not from the  
13 grand jury, but.

14 Q And during your surveillance, you had followed him to a  
15 storage facility and you got a warrant to go look at that  
16 storage facility?

17 A Yes.

18 Q And you didn't find any -- anything that was incriminating  
19 at that storage facility, correct?

20 A Yes.

21 Q Yes, that's correct?

22 A Well, we never searched the storage facility, but we did  
23 obtain that, I believe, and reviewed the records and never  
24 conducted a search.

25 Q Do you recall that there were four phone companies that

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1 subpoenas were issued to?

2 THE COURT: I think he already said that.

3 MR. MAYNARD: Okay.

4 BY MR. MAYNARD:

5 Q And do you recall that there were three banks that  
6 subpoenas were issued to?

7 A That sounds right.

8 Q You mentioned the other day on your direct examination, I  
9 believe, that you had looked at his banking records and there  
10 was one particular transaction out of all these banking  
11 records that you thought was a little peculiar or suspicious?

12 A There was actually a couple, but I was asked about one.

13 Q Okay. Did you actually have a forensic accountant go  
14 through and look at his banking records?

15 A Yes.

16 Q And did the forensic accountant prepare a report on the  
17 banking records?

18 A Yes.

19 Q Okay. And the one particular matter that you talked about  
20 that you said looked a little suspicious was a \$10,000 deposit  
21 and the next day was a \$5,000 withdrawal?

22 A Well, it was three days later there was a \$5,000 --

23 Q Yeah.

24 A And it was -- yeah. \$10,000 cash, yes.

25 Q Did you, in the process of your investigation, go through

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1 and determine if he had made any major purchases within a day  
2 or two of that withdrawal?

3 A We analyzed bank records to see if there was evidence of  
4 that, including, obviously, credit cards and things like that.

5 Q Did you look to see whether or not he had bought one of  
6 his two moving trucks within a week of when he made that  
7 withdrawal?

8 A Yea. We did not see evidence of that.

9 Q And did you look to see -- even in the documents that you  
10 found in his truck you didn't see any evidence that?

11 A Not -- yeah -- no evidence that I can recall.

12 Q You don't know whether he did or he didn't?

13 A Yeah, I don't. No. There was not.

14 Q You also sent subpoenas to Microsoft, correct?

15 A Yes.

16 Q And sent subpoenas to at least three credit agencies?

17 A Yes.

18 Q And subpoenas to yelp.com?

19 A Yes.

20 Q You were pretty invested in this investigation, were you  
21 not?

22 A Yes.

23 Q Spending a lot of time on it?

24 A Yes.

25 Q Okay. And we had a woman who came in here earlier



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1     testifying about an incident that occurred in a parking lot at  
2     a -- I believe it was a T-Mobile or Verizon store.

3             Do you recall that testify?

4     A     Yes.

5     Q     Okay. And did you ever subpoena Mr. Abdul Kareem's  
6     medical records to see whether or not he went to the hospital  
7     the day after he was hit in that parking lot?

8     A     No.

9     Q     So you don't know as we sit here whether or not he went to  
10    the hospital at John C. Lincoln the next day?

11    A     No.

12    Q     You don't know whether he went to visit a doctor?

13    A     No.

14    Q     A week later?

15    A     No. I don't know that.

16    Q     Okay. You could have done that had you chosen to?

17    A     Yes. I suppose, yes.

18    Q     Now, let me back up just a little bit.

19             On the Garland, Texas, matter, you, as part -- as  
20    being the case agent in this case would have looked at that  
21    incident pretty thoroughly, would you not?

22    A     Yes.

23    Q     You were aware that the FBI had paid a confidential  
24    informant in Mr. Simpson's case over \$130,000 in the course of  
25    five years?

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1 A No. I'm not aware of that.

2 Q You've never heard that before?

3 MS. BROOK: Objection, Your Honor. Relevance.

4 THE COURT: Sustained.

5 BY MR. MAYNARD:

6 Q Okay. Was the FBI -- did the FBI alert the Police  
7 Department in Garland, Texas, that Mr. Simpson may be a  
8 problem?

9 A Yes. My understanding is yes.

10 Q Okay. And did they send a copy of his picture to the  
11 Garland Police Department or to the FBI office in Texas?

12 A That's my understanding is yes.

13 Q Okay. And how long before the incident occurred did the  
14 FBI do that?

15 A I don't know.

16 MR. MAYNARD: May I approach the witness -- the  
17 clerk?

18 THE COURT: Yes.

19 MR. MAYNARD: Your Honor, may I approach the clerk  
20 with Exhibit 548?

21 THE COURT: Yes.

22 MR. MAYNARD: 549 and 550.

23 BY MR. MAYNARD:

24 Q Agent, looking at Exhibit 548, do you recognize that  
25 photograph?

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1 A I recognize the photograph, yes.

2 Q Okay. And what is that a picture of?

3 A That's a picture of Mr. Kareem's living room.

4 Q And looking at 549, do you recognize that photograph?

5 A I actually don't recognize this one, but I can tell from  
6 the content of the picture that it's clearly Mr. Kareem's --

7 Q Are these paragraphs taken by the FBI when it did its  
8 search?

9 A These look like the ones -- yes. These look like the ones  
10 taken by the FBI.

11 Q And Exhibit 550, do you recognize it?

12 A I don't recognize this particular picture, but I -- so I  
13 don't.

14 Q Okay. And do you recognize this as the room -- photograph  
15 of the room in Mr. Abdul Kareem's apartment?

16 A I don't.

17 MR. MAYNARD: Move for the admission of 549 and 548.

18 MS. BROOK: No objection.

19 THE COURT: 548 and 549 are admitted.

20 (Exhibit Nos. 548 and 549 admitted in evidence.)

21 MR. MAYNARD: May I publish, Your Honor?

22 THE COURT: Yes.

23 BY MR. MAYNARD:

24 Q Now, when the FBI goes into an apartment or to a house, do  
25 they normally take pictures as they first go in and then do

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1 they take pictures after they leave?

2 A Well, so I guess not technically as they first -- so first  
3 entry is gained. And so depending on the circumstances, if  
4 that's done by a SWAT team or something like that, that entry  
5 would take place first, so you wouldn't get photos before they  
6 had entered.

7 If it's a compliant one, then the Evidence Response  
8 Team will begin their search by doing entry photos before  
9 conducting the search.

10 Q In this particular case was there a SWAT team involved?

11 A Yes, there was.

12 Q Was there a concern that the condo or the apartment might  
13 be boobie trapped?

14 A Yes, there was.

15 Q And was that because Mr. Verdugo had advised the FBI that  
16 Mr. Abdul Kareem boobie trapped his apartment?

17 A Yes. That was a concern, yes.

18 Q And did you find any -- or did the FBI find any boobie  
19 traps in the apartment?

20 A No. No.

21 Q Did you find any surveillance equipment in the apartment?

22 A I believe not.

23 Q Were there any alarm systems in the apartment?

24 A I don't believe so.

25 Q Had Mr. Verdugo told the FBI that there might be alarm

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1 systems in the apartment?

2 A Not in this apartment, but in the previous apartment that  
3 he lived in, he said that one was boobie trapped or had  
4 alarms -- I don't know if he said "alarms" but.

5 Q Because of that, there was some concerns. So when you  
6 went into this one, you were careful?

7 A Yes. I made the assumption that if he had it in the other  
8 apartment, he might have it in this one as well.

9 Q And is this the way you understand the apartment looked?

10 A This is -- I have never actually seen the apartment. I  
11 have only seen the photos. But there is -- this is what I  
12 understand to be his apartment.

13 Q Exhibit 549. Again, that's the way the apartment looked  
14 when the FBI got there?

15 A That I can't say.

16 MS. BROOK: I object to foundation based upon what he  
17 testified to.

18 THE COURT: He said: "That I can't say."

19 BY MR. MAYNARD:

20 Q You did not then participate in going into the apartment;  
21 is that correct?

22 A No.

23 Q Now, did the FBI, simultaneously to going into Mr. Abdul  
24 Kareem's apartment, did they also conduct a search on  
25 Mr. Hyman's apartment?

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1 A Yes. The FBI did.

2 Q Did you participate in that particular search?

3 A No.

4 Q And was it in that search where the lists that we have  
5 seen with the seven individuals on it that the expert  
6 testified about were found?

7 A Yes.

8 Q Now, the FBI, as we have seen, collected these guns from  
9 Garland, Texas, correct?

10 A Yes.

11 Q And they have done a fingerprint analysis on them?

12 A Yes.

13 Q And they have determined that my client's fingerprints are  
14 not on those guns?

15 A Yes.

16 Q Correct.

17 They've also done a DNA analysis?

18 A In one -- are you referring to the guns on the table or  
19 the just the ones from Garland, right.

20 Q The guns from Garland.

21 A That's what I wanted to be sure.

22 Sorry, could you say the last question, sir?

23 Q Yeah. Did the FBI do a DNA analysis to determine whether  
24 or not my clients' DNA was found on these guns from Garland,  
25 Texas?

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1 A Yes.

2 Q And they did not find my client's DNA, did they?

3 A No.

4 Q Did the FBI take apart the guns to determine how well they  
5 had been maintained?

6 A Not that I know of.

7 Q We have heard testimony today that these guns were  
8 maintained in a certain manner with grease on them and some  
9 left on.

10 Has anybody checked to see how they were maintained?

11 A No.

12 Q So as we sit here, you don't know whether they were  
13 properly maintained or not properly maintained?

14 A Yeah. I cannot say whether they were properly maintained.

15 Q Did the FBI do a -- work with the ATF --

16 What is the ATF?

17 A Alcohol Tobacco & Firearms is an agency of the federal  
18 government that deals primarily in those type of violations.

19 Q Does the FBI work in conjunction with the ATF to determine  
20 where guns are purchased?

21 A Yes.

22 Q And did the FBI work with the ATF in this case to  
23 determine where the guns that were found in Garland, Texas,  
24 had been purchased?

25 A Yes.

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1 Q And was there anything in that investigation of the guns  
2 found in Garland, Texas, that indicated that my client had  
3 purchased those guns?

4 MS. BROOK: Objection, Your Honor. Speculation.

5 THE COURT: Overruled. You may answer if you know.

6 THE WITNESS: Nothing in the ATF reports that would  
7 indicate that Mr. Kareem purchased those guns.

8 BY MR. MAYNARD:

9 Q Okay. Are you familiar with an individual by the name of  
10 Ali Biaz?

11 A Yes.

12 Q Okay. Was he actually investigated in this case?

13 A Yes.

14 Q And had Mr. Biaz had an AK-47 for sale on Craigslist in  
15 January of 2015?

16 A I think that is correct, yes.

17 Q And did he indicate that he had posted on Backpage on  
18 January 6th of 2015, an AK-47 for sale on that particular day?

19 A I don't recall the exact dates off the top of my head of  
20 when he posted it, but.

21 Q But there would be a 302 that would indicate that,  
22 correct?

23 A Yes. I think there would be a 302 that would indicate  
24 that.

25 Q Let me see if I can show you the 302 dated May 22nd of



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1 2015 and see if that helps to refresh your recollection.

2 Do you see that last paragraph?

3 A Yes.

4 Q Does that help refresh your recollection?

5 A Well, I didn't draft this report, but I can --

6 Q I understand. But this report would have been sent to you  
7 for review, correct?

8 A Yes. I would have reviewed this.

9 Q This would have been done by an agent who was reporting to  
10 you as the case agent on the case?

11 A Well, so this technically would have gone to the  
12 Simpson/Soofi because it was tracking those weapons.

13 But, yes, this did not come to me but I definitely  
14 reviewed this at one point.

15 Sir, could it be put back on, please? I want to read  
16 the last part.

17 Okay. Thank you.

18 Q Mr. Biaz had an AK-47 for sale on January 6th of 2015 here  
19 in Phoenix, Arizona for \$700, correct?

20 A Yes. According -- yes.

21 Q Did the FBI investigate Mr. Biaz to get his text messages  
22 to see if he had texted anybody about this?

23 A Yeah. We already had copies of the text messages from one  
24 of the phones seized in Dallas.

25 Q And that's how you came to go to him, correct?

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1 A Yes.

2 Q Okay. Were there other individuals that sold AK47s that  
3 you also investigated?

4 A There were other individuals that were selling AK47s.

5 I think even Mr. Biaz couldn't say with certainty  
6 that he did actually sell it other than what his statement  
7 was.

8 But one that comes to mind is -- I think his last  
9 name was Leon. L-E-O-N. I don't know if I'm pronouncing that  
10 correctly. But he was another individual that was also  
11 selling AK47s around that same time.

12 Q Now, in the searches of Soofi and Simpson's apartment, you  
13 also found a number of notebooks, correct?

14 A Yes.

15 Q And some of those notebooks actually had writing in it and  
16 you would analyze that writing?

17 A Yes.

18 Q Okay. Now, by analyzing it, you may have looked at it to  
19 determine who wrote it, correct?

20 A Yes.

21 Q And there were also times when the FBI looked at that  
22 notebook and found that there had been writing on a sheet of  
23 paper. That paper had been ripped out. But you could tell  
24 from the indentation underneath that there had been writing on  
25 the sheet that was on top?

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1 A Yes.

2 Q Does that make sense?

3 A Yes. Indented writing?

4 Q Right.

5 A Yes.

6 Q And the FBI has a technique to uncover what is in that  
7 indented writing; isn't that right?

8 A Yes.

9 Q And in this particular case, you sent some of those  
10 notebooks off to Quantico to have them be tested  
11 electrostatically; is that right?

12 A Yes.

13 Q In fact, there's a -- it's an electrostatic detection  
14 apparatus that is used by the FBI, correct?

15 A Yes.

16 MR. MAYNARD: And the -- may I approach?

17 THE COURT: Yes.

18 MR. MAYNARD: Can the witness be shown Exhibit 553.

19 BY MR. MAYNARD:

20 Q Do you recall seeing this document before?

21 A Yes.

22 Q And was this document tested by the FBI's lab in Quantico,  
23 Virginia?

24 A Yes.

25 Q And did you prepare a 302 on this document?

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1 A I believe I did.

2 Q Do you recall that you prepared a 302 where you wrote out  
3 in more legible English what you understood was on this  
4 document?

5 A Yes. I do recall that.

6 Q And this would have been done in the normal investigative  
7 process of the FBI, correct?

8 A Drafting the 302?

9 Q Yeah. Drafting the 302.

10 A Yes.

11 Q Looking at the document that was attached and then  
12 drafting a 302 as to what it says?

13 A Yes.

14 MR. MAYNARD: Okay. I move for the admission of 553.

15 MS. BROOK: Your Honor, I object to foundation based  
16 upon the document itself and the writing.

17 THE COURT: I think --

18 MS. BROOK: And hearsay.

19 THE COURT: All we know about this is that he's seen  
20 it before. I don't think you -- I mean, we can infer that you  
21 tied it back in to this is some indented writing that was  
22 electrostatically tested but he didn't say that.

23 MR. MAYNARD: Okay. Let me --

24 BY MR. MAYNARD:

25 Q Was this -- or the original --

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1           This is a photocopy. Was the original -- is this a  
2 photocopy of a page from a notebook that was uncovered at  
3 Simpson and Soofi's apartment?

4       A    It looks like it is, yes.

5       Q    And did you take it and send it to Quantico, Virginia?

6       A    Yes. I sent it, yes.

7       Q    And did it get an electrostatic detection.

8       A    I don't know the exact -- someone at the Quantico lab  
9 performed a test on it to be able to look at the indented  
10 writing.

11      Q    And who was the individual that did that?

12      A    His name was Antoine Frazier and he's a -- I can't recall  
13 his title, but he's a lab -- an employee at the FBI lab at  
14 Quantico.

15      Q    And did Antoine Frazier prepare a report to be sent back  
16 to you?

17      A    Yes.

18      Q    And did you then take that report and prepare a 302?

19      A    Yes. Yes. It was based on his report, so, yeah.

20      Q    Did you base it on the document or did you base it on the  
21 report?

22      A    I based it just solely on the document, I believe. So  
23 using his indented version, I then drafted a 302.

24           MR. MAYNARD: Your Honor, I move for the admission of  
25 553?

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1 MS. BROOK: Same objection as it relates to hearsay.

2 THE COURT: Well, considering the fact that I can't  
3 read one single thing on here except a stray letter, I can't  
4 figure out what the value of this is other than to show this  
5 is what it looks like when it comes back from being tested.

6 I mean, nobody can read this. I don't know how Agent  
7 Whitson did an interpretation of it but maybe he can explain  
8 it.

9 BY MR. MAYNARD:

10 Q I don't have the original, but Agent Whitson, using the  
11 report -- and I have Mr. French (sic) subpoenaed so I hate to  
12 have him come back but I can but he prepared a 302?

13 THE COURT: I can't assess whether it's admissible  
14 because I can't read a single thing on here.

15 But obviously, the next thing you want to do is have  
16 Agent Whitson's interpretation of this.

17 MR. MAYNARD: I do.

18 THE COURT: Because nobody can read it. So I need to  
19 see that.

20 MR. MAYNARD: All right. May I approach?

21 THE COURT: Yes.

22 So how did you read it? Does the original -- is it  
23 more legible or did you use a magnifying glass or?

24 THE WITNESS: Your Honor, it comes back in kind of  
25 two versions. So it has that one version where the writing is

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1 in white and the background is in black.

2 And then another version, the opposite. And so using  
3 both of those versions to look back and forth, the parts that  
4 you can see in black you can write; and then you've got to go  
5 to the other version to see the rest of the document, back and  
6 forth.

7 And, again, it is my interpretation of what this  
8 says.

9 BY MR. MAYNARD:

10 Q All right. Agent Whitson, Exhibit 554, this is a 302 that  
11 you prepared, correct?

12 A Yes.

13 Q You prepared it on or about October 21st of 2015?

14 A Yes.

15 Q And you did this after having sent a small blue notebook,  
16 along with other documents, back to Quantico to be analyzed,  
17 correct?

18 A Yes.

19 Q And this particular notebook had been found in Soofi and  
20 Simpson's apartment; is that right?

21 A Yes.

22 Q And you received a report back from Quantico that you  
23 utilized to prepare this document?

24 A Yes.

25 Q And this is the type of document that you would have

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1 prepared in the normal course of your investigation?

2 A Yes.

3 Q And based upon the testing that was done back in Quantico,  
4 it appears that somebody had written a note and then ripped  
5 that note out of the notebook, correct?

6 A Yes.

7 Q And what we then have is your interpretation, based upon  
8 the testing that has been done by the FBI, as to what that  
9 original note said?

10 A Yes. So based on the indent that was left on the page  
11 beneath the page that was ripped out.

12 Q Because it was important for you to try to determine all  
13 the relevant evidence that you could find in this case?

14 A Yes.

15 MR. MAYNARD: Your Honor, I move for the admission of  
16 553 and 554.

17 MS. BROOK: Same objection, Your Honor.

18 THE COURT: The objection is overruled.

19 553 -- and let me just say with respect to 554, I  
20 don't know if there is any additional objection. I have only  
21 been focusing on Agent Whitson's quoting of what he believes  
22 was written in the indented writing. So there may be other  
23 portions, but I haven't read them.

24 MS. BROOK: And so, Your Honor, the same objection  
25 would be hearsay as it relates to the underlying information



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1 upon which the text was derived.

2 THE COURT: The objection is overruled and I'm going  
3 to admit 553 and at least that portion of 554 that contains  
4 the interpretation of 553.

5 (Exhibit Nos. 553 and 554 admitted in evidence.)

6 BY MR. MAYNARD:

7 Q All right. Agent Whitson, would you, beginning on the  
8 bottom, would you read to the jury what that says.

9 A Yes. It says:

10 "Bismillah.

11 Dear akhi Fil Lah Subhan Allah. There was a change  
12 in plans. Indeed something dreadful came up. The money that  
13 I had from you was being used for what was needed for the  
14 initial plan but that changed. This money is what was left  
15 over..." --

16 And I think it's the word "but" --

17 "...I will leave you with the title of my car to do  
18 as you please with it. I believe Abdul Malik knows how to get  
19 it notarized. I was also going to give you my tax return but  
20 it won't be here in time. Please forgive me if you do not get  
21 all the money back.

22 Always fear Allah and keep me in your dua inshaAllah.  
23 You have benefitted me greatly. Allah grant you Jannah.  
24 Forgive me for my short..." --

25 I can't tell the word --

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1 "...and may Allah unite us in Jannah."

2 Signed. "Ibrahim."

3 Q And this was found in Ibrahim's apartment?

4 A Yes.

5 Q And do you know as part of your investigation who Ibrahim  
6 gave the title to his car to?

7 A I can -- no. I don't know with certainty.

8 Q Okay. Do you understand that the title was given to some  
9 individual?

10 A Yes.

11 Q But you as the case agent don't know who that is?

12 A I don't know with certainty, but I have an idea.

13 Q Okay. It wasn't given to my client, was it?

14 A No.

15 THE COURT: I take it since we're reading this  
16 indented writing that you never found the original note?

17 THE WITNESS: That's correct, Your Honor.

18 MR. MAYNARD: Sorry, Judge. I've got a mess.

19 May I approach?

20 THE COURT: Yes.

21 BY MR. MAYNARD:

22 Q Agent Whitson, before we get to 555 and 556 and 557, after  
23 obtaining that notebook we just looked at, what steps did you  
24 do to further investigate who had received the car from  
25 Mr. Simpson?

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1 A I -- it was -- as soon as I saw that information I called  
2 a meeting with various other agents in the office who were  
3 handling different aspects of the branching investigations  
4 that came off of this main one and then asked if this meant  
5 anything to them and then collected information in that sense.

6 Q Okay. And did you go out and interview anybody?

7 A I did not go out and interview.

8 Q And although you said you've speculated who got it, you  
9 don't know?

10 A I don't know.

11 Q All right. Could you please look at 556 please -- or 555.

12 Have you seen this envelope before as part of the  
13 investigation?

14 A Yes.

15 Q Was this an envelope that was found in Elton Simpson's  
16 apartment?

17 A Yes.

18 Q And was this preserved by the FBI in the normal course of  
19 its investigation?

20 A Yes.

21 MR. MAYNARD: Move for the admission of 555.

22 MS. BROOK: No objection.

23 THE COURT: 555 is admitted.

24 (Exhibit No. 555 admitted in evidence.)

25 BY MR. MAYNARD:

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1 Q Who appears to be the sender of this letter?

2 A Abu Jihaad.

3 Q And do you know who Abu Jihaad is?

4 A Yes.

5 Q Who is he?

6 A He was an individual arrested a while back for  
7 terrorism-related charges. He was convicted of providing  
8 information to a terrorist group while employed as a member of  
9 the Navy.

10 Q And would you take a look at 556, please.

11 Have you seen this document before?

12 A Yes.

13 Q And was this found in Mr. Simpson's apartment also?

14 A Yes.

15 Q And was it preserved by the FBI in the normal course of  
16 its investigation?

17 A Yes.

18 MR. MAYNARD: I'd move for the admission of 556.

19 MS. BROOK: No objection.

20 THE COURT: 556 is admitted.

21 (Exhibit No. 556 admitted in evidence.)

22 BY MR. MAYNARD:

23 Q The letter was written to an individual by the name of  
24 Saabir Nurse. Do you see that?

25 A Yes.

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1 Q Who is Mr. Nurse?

2 A Saabir Nurse is an associate of Ibrahim's.

3 Q Okay. Is this the individual that he worked with?

4 A At the dentist office, yes.

5 Q Okay. And it appears to have come from the same  
6 individual that's in prison for terrorism?

7 A Yes.

8 Q And, could you take a look at --

9 And, again, that was found at Soofi and Simpson's  
10 apartment, correct?

11 A Yes.

12 Q Could you take a look at Exhibit 557, please.

13 Have you seen this document before?

14 A Yes.

15 Q And was this found at Soofi and Simpson's apartment?

16 A Yes.

17 Q And was it found in the normal course of your  
18 investigation?

19 A Yes.

20 Q And was it preserved by the FBI?

21 A Yes.

22 MR. MAYNARD: I move for the admission of 557.

23 MS. BROOK: No objection.

24 THE COURT: 557 is admitted.

25 (Exhibit No. 557 admitted in evidence.)

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1 BY MR. MAYNARD:

2 Q This appears to be another letter from the same Saabir  
3 Nurse?

4 A Yes.

5 Q From Mr. Jihaad?

6 A Yes.

7 Q Did you ever interview Mr. Jihaad in connection with this  
8 investigation?

9 A No.

10 Q Did you interview Saabir Nurse in connection with this  
11 investigation?

12 A The FBI did conduct interviews with Mr. Nurse.

13 Q And there was a 302 done?

14 A Yes. That's my understanding.

15 Q Did anyone ever interview Mr. Nurse after you prepared the  
16 handwritings or the 302 on that electrostatic page?

17 A I don't know if it was after I had prepared the 302, but  
18 it was after we had had that talk. So I had that talk before  
19 the 302 was even done.

20 Q Do you know whether or not the FBI asked Mr. Nurse if he  
21 had received that document from Mr. Simpson?

22 A I believe, yes. I believe they did.

23 Q And did the FBI ask him for a copy of it?

24 A I don't. I don't know.

25 Q In other words, you didn't get a copy of the document?

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1 A Yeah. I never received it -- a copy of that document.

2 MR. MAYNARD: Okay. Judge, is there any way we can  
3 quit early today and I can get organized and be done in about  
4 ten minutes in the morning?

5 THE COURT: Well, the morning?

6 MR. MAYNARD: Oh, the afternoon.

7 THE COURT: Not the morning.

8 But, yes, we can, only if you promise that tomorrow  
9 morning when the rest of us aren't here that you make an  
10 appointment to have Maureen mark any additional exhibits that  
11 you intend to use in the cross-examination of Agent Whitson.

12 MR. MAYNARD: I promise.

13 THE COURT: Okay.

14 Ladies and gentlemen, we will recess until one  
15 o'clock tomorrow afternoon.

16 You are reminded again of the admonition not to  
17 discuss the case among yourselves or with anyone else.

18 Please do not form any conclusions about the case  
19 until you have heard all the evidence and begun your  
20 deliberations.

21 Court is in recess until one o'clock tomorrow  
22 afternoon.

23 (End of Excerpt of Proceedings.)

24 \* \* \*

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## C E R T I F I C A T E

I, ELIZABETH A. LEMKE, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 8th day of March, 2016.

s/Elizabeth A. Lemke  
ELIZABETH A. LEMKE, RDR, CRR, CPE